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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1696 of 1996

with

SPECIAL CIVIL APPLICATION No 11461 of 1994

with

SPECIAL CIVIL APPLICATION No 14073 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRABHUDAS K NIMAVAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1696 of 1996
   MRS DT SHAH for Petitioner No. 1
   MR PITAMBER ABICHANDANI A.G.P. for Respondents No. 1-4,6-7
   MR DD VYAS for Respondent No. 5
   NOTICE SERVED for Respondent No. 5
   RULE SERVED for Respondent No. 8
2. Special Civil Application No. 11461 of 1994
   MR NR TANDEL for Petitioner No. 1
   M/S PURNANAND & CO for Respondent No. 1

3. Special Civil Application No. 14073 of 1994

MR NR TANDEL for Petitioner No. 1

M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 16/10/2001

COMMON ORAL JUDGEMENT

1. ThIs group of petitions are taken up for final hearing on priority being Senior citizen matters.

2. Heard Ms.D.T. Shah and Mr.N.R. Tandel, learned counsel appearing for the petitioners. The petitioners of each the petition have envoked jurisdiction under Article 226 of Constitution of India and have prayed that appropriate order be issued directing the respondents-State to grant retirement benefits available to the Panchayat employees under the Government Resolution alongwith other benefits. They have prayed for appropriate writ, direction or order for setting aside the order rejecting the claim of the petitioners for pensionary benefits and also declare the Resolution dated 15.12.1987 as illegal and arbitrary.

3. The contention of the petitioner is that initially there was a scheme originally called as "Sarvodaya Yojna" and each of them were employed for the activities of scheme. Undisputedly Sarvodya Yojna had Government sponsorship. It is inter alia contended that their services in the Sarvodaya Yojna should be taken into account and will be considered as continuous service under the respondent-District Panchayat.

4. Affidavit-in-reply, by the State Government has not been filed. Affidavit-in-reply filed by the respondent-Panchayat is at page 68 in Special Civil Application 1696 of 1996

5. The contention raised by the respondent-Panchayat is that the affidavit-in-reply and is that originally there were two cadres in the Sarvodaya Yojna; one was ex-cadre and another was education cadre. The petitioners are the ex-cadre employees of Sarvodaya Yojna, and therefore, not entitled to any benefit as per the Resolution, annexure-I (page 30) of 1981, read with Government Resolution of 1990, passed by the Government. The other contention is that whether the petitioner should be made entitled to pensionary benefit or not is a question of policy and the said policy has been decided by the State Government. The Resolution issued by the

Finance Department of the State of Gujarat dated 29.10.90 would not apply to an employee like present petitioners. It is contended by the Panchayat that the petitioners services are allocated by Resolution dated 15.12.87 and at that point of time the each petitioner has given an undertaking and has accepted the Resolution dated 15.12.87 issued by the Government and therefore the say of the petitioner is not acceptable. For short the respondent Panchayat says interalia, that claim of the petitioner cannot be accepted on the principle of estoppel, in view of the written undertaking given by him.

6. The averments made in the petition and the facts reflected in the rejoinder-affidavit if considered closely, the reasoning adopted by this Court while dealing with Spl.C.A. No.13589/94 (Coram : M.S. Parikh, J.) would positively help the present petitioner. The Court at the relevant point of time had mostly on the same set of facts has expressed clearly that services rendered with Sarvoday Yojna should be taken in to account for the purpose. I would like to reproduce the relevant part of the order, because the same would help this Court in concluding the dispute raised by the present petitioners:-

> "On a reference to the impugned order dated 12.10.94 Annexure-E it can be seen that the petitioner's request for grant of pension has been turned down on the ground that the resolution dated 15.12.1987 provides for the date of absorption in Panchayat service from 1.4.1987 and that the prior service in Sarvodaya Scheme would not be counted for the purpose of terminal benefits. It is in this connection that a reference has been made to the representation of ex-employees dated 1.10.1993. Reference has further been made to certain resolutions and circulars in the said representation. They have also been placed on record at Annexure-I, J, & K. While taking the decision impugned in this petition the case of the petitioner has not been taken into consideration in the light of the aforesaid resolutions/circulars and the joint representation made by the ex-employees of Sarvodaya Yojna.
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> In so far as the case of the petitioner is concerned he has put up service of around 8 years and 2 months with effect from 1.4.1987 and that is how if the period is counted from

> 1.4.1987 the service cannot be said to be pensionable. However, the stand of the petitioner is based upon the aforesaid circulars/resolutions with the result that if the service rendered in the Sarvodaya Yojna, is added, the petitioner would be covered under the pensionable period".

7. Ms.Shah has rightly pointed out that there is Government Resolution dated 16.4.98 granting pensionary benefits to the teachers allocated to the panchayat service who were initially serving under the Sarvodaya Yojna, this add strength to the case for the petitioners. This policy decision has created discrimination. Undisputedely the present petitioners were with Sarvodaya Yojna and under the policy of the Government, services covered under the Sarvodaya Yojna were to be terminated. Because of the intervention of this Court the petitioner could save their termination and were continued in service, in return. They were allocated to the panchayat service in 1981. Thereafter after a lapse of time i.e. approximately 6 years, the Government Resolution dated 15.12.87 was issued by the Government and a written undertaking was obtained from the employees who on threat of termination might have agreed to any proposition by the Government. The stand of the State should be of model humble employer and in consonance with the policy of awelfare state. When the respondent-State has granted benefit to the teachers, when a person serving in the education cadre of Sarvodaya Yojna is granted pensionary benefit, then the ex-cadre employee could not have been ignored by the State. I agree that while carving out one policy the Government is mainly considering the financial aspect and the burden which may have to be carried by the State for long years to come but I am afraid that the number of ex-cadre servants of old Sarvodaya Yojna would be in large number. On one hand the State has introduced many welfare scheme including pension schemes for various class and catagories of persons and on the other surprising discrimination has been carried out. The policy decision normally could not have been interfered by this Court by exercising jurisdiction under Article 226. But when the policy qua to different cadres serving with original Sarvodaya scheme is found to be discriminating or unhealthy this Court shall have put the things in order. While dealing with the above referred Spl. C.A. this Court had directed at the relevant point of time the respondents to reconsider the case of the petitioner, in light of the Government Resolutions and other circulars. The apprehension expressed by the learned counsel for the petitioner is that if the present

petitioner are directed to approach to the State again for making representation then this senior citizens aged about more than 65 years would not get advantage of the policy of the State reflected in the various resolutions issued granting pensionary and other benefits to such employee. Undisputedly the present petitioners have served for several years in the panchayat service, the State should not have hesitation in considering their earlier service rendered to the state during 1981 to 1987 or even prior to that day i.e. the day on which they were recruited by the Sarvodaya Yojna. As per the prevailing policy of earlier years it is rightly submitted that when Sarvodaya Scheme was envisaged the state policy was in confirmity at that relevant point of time and therefore this petition should be allowed. The Government Resolution dated 15.12.87 annexure-J and other orders rejecting the request to grant pensionary benefit are hereby quashed and set-aside qua all the three present petitioners and shall not have binding effect on the present petitioner. The state is directed to consider the services rendered by present petitioners from their initial date of appointment when they were absorbed in the Panchayat cadre i.e. from the year 1980-81 till the date of retirement or otherwise for pensionary benefits as continuous service. Further it is observed that this period should be treated to grant pensionary benefit only and they will not be entitled to claim any cash or other financial benefit. I am told that the present petitioner were given other benefits like leave etc., for their earlier services with Sarvodaya scheme.

8. Rule is made absolute to above extent. Respondent-State is directed to calculate the pensionary benefit of the present petitioner within four months and should see that the arrears are cleared within six months from the date of the receipt of writ. The state is further directed that they get the pensionary benefits regularly immediately after the payment of arrears. The request to award interest by the learned counsel for the petitioners is not accepted in view of the fact that this Court has allowed the petition, exercising discretion in favour of the old employee, in light of the Government Resolution issued in the year 1998 in favour of the employees serving in the education cadre of Sarvodaya scheme visavis other policy Resolutions passed in recent years. Direct Service is permitted.

(C.K. Buch, J.)

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